



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No.: DOC 3.1.19	Subject: <b>INVESTIGATIONS</b>
Chapter 3: FACILITY/PROGRAM OPERATIONS	Page 1 of 5 and Attachment
Section 1: Security Operations	Effective Date: May 1, 1997
Signature: /s/ Mike Batista, Director	Revision Date: 03/11/2015

**I. POLICY:**

The Department of Corrections will provide the requirements for reporting and investigating criminal conduct involving Department employees and/or offenders in accordance with Department policies, procedures, and state and federal law.

**II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

**III. DEFINITIONS:**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Chief of Investigations (COI) – The contact responsible for delegating all Department-initiated criminal investigations, supervising all aspects of criminal investigations, and coordinating with and acting as a liaison to criminal justice agencies.

Complainant – The person(s) who makes the initial complaint or files a formal charge against a Department employee or offender.

Complaint – An allegation of violation of law.

Confidential – Information to be shared only by order of a court or with those whose official capacity dictates their absolute need to know.

Criminal Investigation – A formal investigation to discover whether there is probable cause to believe that criminal conduct has occurred and investigated by a law enforcement agency having jurisdiction (LEAJ) or by a Department of Corrections criminal investigator with consent of the LEAJ.

Criminal Investigator – A Department of Corrections investigator in the Office of Investigations with sworn Peace Officer authority established through a Memorandum of Understanding with the Montana Department of Justice, Division of Criminal Investigations.

Garrity Warning – Formal advisement given to an individual during an administrative investigation when potential for criminal charges may exist, and neither the individual's answers nor the fruits of those answers may be used against the individual in a subsequent or concurrent criminal prosecution.

Policy No. DOC 3.1.19	Chapter 3: Facility/Program Operations	Page 2 of 5
Subject: <b>INVESTIGATIONS</b>		

Investigation – A formal fact-finding activity that meets minimum standards identified in investigational operational procedures for the specific purpose of addressing complaints or allegations. Investigations may include, but are not limited to: interviews, surveillance, review of electronic and paper records, correspondence, and other information storage devices of a Department employee or offender.

Investigator – The designated Department employee assigned to conduct an official investigation of a complaint, incident, or report affecting the safety and security of Department employees, offenders, or visitors.

Law Enforcement Agency of Jurisdiction (LEAJ) – The government agency, i.e. sheriff's office or local police department, operating within their defined area of responsibility.

Miranda Warning – Formal notice given to an individual by an assigned criminal investigator of the individual's constitutional right to have legal representation in a criminal investigation.

Offender – Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers. The term includes former offenders for whom less than one year has elapsed since discharge from Department custody or supervision.

Office of Investigations (OI) – The office that oversees all criminal investigations for the Department.

Racial Profiling – As defined by 44-2-117, MCA the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

#### **IV. DEPARTMENT DIRECTIVES:**

##### **A. General Requirements**

1. Department employees must:
  - a. report immediately, in writing, any received information or personal knowledge regarding a crime to their supervisor or the Office of Investigations (OI);
  - b. ensure information regarding investigations is kept confidential and disclosed only with the approval of the Chief of Investigations (COI); and
  - c. cooperate with an investigation and may not provide erroneous and/or malicious information in a complaint or statement which they know or suspect to be false or the employee may be subject to disciplinary or corrective action in accordance with *DOC Policy 1.3.2 Employee Performance and Conduct* and criminal sanctions in accordance with 45-7-205, MCA.
2. The Chief of Investigations (COI) is responsible for:
  - a. delegating all Department criminal investigations and assigning investigators accordingly;
  - b. upon receipt of criminal complaints involving Department property, employees, and offenders, notifying the Law Enforcement Agency of Jurisdiction (LEAJ); and
  - c. restricting access to any investigative material and pertinent resources to protect the integrity of the investigation and maintain confidentiality.
3. Investigators must:

Policy No. DOC 3.1.19	Chapter 3: Facility/Program Operations	Page 3 of 5
Subject: <b>INVESTIGATIONS</b>		

- a. conduct fair and objective criminal investigations and exercise professionalism during the course of an investigation;
  - b. conduct investigations in such a manner that information is kept confidential and disclosed only with the approval of the COI or designee;
  - c. administer warnings to employees who are the subject of an investigation or participating in an investigation;
  - d. employ sound investigative techniques in accordance with state and federal law, Department rules, policies and procedures;
  - e. when they have reason to believe that false allegations were made, or uncover new allegations, refer such issues to the COI; and
  - f. complete specialized training prior to conducting sexual assault or other specialty type investigations.
4. Department employees are prohibited from engaging in racial profiling in accordance with *44-2-117, MCA*.
  5. Administrators must provide investigators with unrestricted access to Department records including, but not limited to, documents; electronic recordings; and correspondence materials relevant to any criminal investigation.

#### **B. Reporting and Handling Complaints**

1. When a supervisor receives information that alleges a crime, he or she must submit, or direct the complainant to submit, the criminal complaint in writing to the COI.
2. The COI may, on a case-by-case basis, authorize an investigation when a verbal complaint is received.
3. Criminal investigations and administrative investigations are conducted separately. When it is unclear whether an incident is criminal or administrative in nature, Department employees will report the incident to the Office of Investigations. The OI will determine if a criminal investigation is warranted or will forward the information to the Office of Human Resources.
4. Only authorized persons shall make reports to the news media in accordance with *DOC Policy 1.1.8 Media Relations*.

#### **C. Assignment of Investigations**

1. The COI will delegate all Department criminal investigations.
2. Only investigators from the OI may be used to conduct criminal investigations.

#### **D. Rights of Employees**

1. Department employees are guaranteed constitutional and administrative protections; within the boundaries of those protections, employees will cooperate with any authorized investigation or inquiry and will relate fully and truthfully their knowledge of all issues pertaining to any criminal investigation.

Policy No. DOC 3.1.19	Chapter 3: Facility/Program Operations	Page 4 of 5
Subject: <b>INVESTIGATIONS</b>		

2. When applicable, investigators will provide a [Garrity Warning](#) to employees. Employees will be advised that answers will not be used against them in a criminal proceeding. If the employee refuses to answer or testify they will be subject to Department discipline up to, and including, termination.
3. Information obtained during a criminal investigation may be jointly shared and utilized; however, a self-incriminating statement may not be utilized in a criminal investigation against an individual that has been provided with a [Garrity Warning](#).
4. Individuals who report a crime will not be subjected to retaliation by anyone within or outside of their chain of command in accordance with *DOC Policy 1.3.2 Employee Performance and Conduct*.
5. Miranda warnings will be provided by criminal investigators to all employees who are the subject of a criminal investigation.
6. The subject of a criminal investigation may not have a representative present during an interview other than an attorney as provided for in the Miranda Warning.
7. Interviews will be conducted in a private setting, during normal business hours, and allow for periods of rests unless justifiable cause exists or mutual agreement is met to change time and/or location.
8. Investigators will advise all Department employees who are the subject of a criminal investigation that the investigation is criminal in nature.

#### **E. Conducting Investigations**

1. Criminal investigations may be generated by receipt of an incident report, or other forms of communication.
2. Upon receipt of information pertaining to criminal matters, the COI will deny or approve the initiation of the investigatory process and appoint an investigator.
3. Once an investigation is initiated by the COI, the investigation must be completed within the time frame required by the statute of limitations.
4. Investigative materials including, but not limited to incident reports, statements, and investigative reports will be stored in a designated investigative case file. Investigative case files must be submitted to the COI or designee.
5. Confidential criminal justice information may only be shared with criminal justice agencies and those authorized by law or court order. Anyone receiving confidential criminal justice information assumes equal responsibility for the security of the information.

#### **F. Notification Requirements**

1. All criminal investigations will result in a written report to be reviewed by the COI, or designee.

Policy No. DOC 3.1.19	Chapter 3: Facility/Program Operations	Page 5 of 5
Subject: <b>INVESTIGATIONS</b>		

2. The COI, or designee, will forward all criminal investigations with a Request for Prosecution to the county attorney having jurisdiction for a determination of whether a case will be prosecuted.
3. Information obtained from criminal investigations which will not result in prosecution but may result in administrative discipline will be forwarded to the Office of Human Resources.

## **V. CLOSING**

Questions concerning this policy should be directed to the Chief of Investigations.

## **VI. REFERENCES**

- A. 44-2-117, 44-5-303, 53-1-203 MCA
- B. *Montana Operations Manual III, Policy on Discipline*
- C. *DOC Policies 1.1.6 Incident Reporting and Acting Director System; 1.1.8 Media Relations; 1.1.17 Prison Rape Elimination Act (PREA); 1.3.2 Employee Performance & Conduct; 1.3.12 Staff Association and Conduct with Offenders; 1.4.1 Staff Development and Training; 3.1.28 Crime Scene and Physical Evidence Preservation*
- D. *Garrity v. State of New Jersey*, 385 U.S. 493 (1967); *Gardner v. Broderick*, 392 U.S. 273 (1968); *Uniformed Sanitation Men Assoc., Inc. v. Commissioner of Sanitation of the City of New York*, 392 U.S. 280 (1968)
- F. *DOJ Memoranda of Understanding with DOC for Peace Officer Status and Crime Analyst Services*

## **VII. ATTACHMENTS**

[Garrity Warning](#)